IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 328 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-
MR.JUSTICE M.C.PATEL Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

No.1 Yes. Nos.3 to 5 No.

COMMISSIONER OF INCOME-TAX

Versus

PATIDAR OIL CAKE INDUSTRIES

Appearance:

MR MANISH R BHATT for Petitioner

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE M.C.PATEL

Date of decision: 24/07/1999

ORAL JUDGEMENT

For the years 1977-78 and 1978-79 the assessee engaged in production of 'De-cake powder' from ground nut oil cake by Solvent Extraction Process claimed weighted

deduction under Section 35B(1)(b)(iii) of the Income-tax Act,1961 (hereinafter referred to as the 'Act') in respect of laboratory expenses amounting to Rs.39,921/and Rs.41,160/- respectively. The Assessing Officer rejected the claim and Appellate Commissioner of Income-tax (Appeals) upheld the decision of the Assessing Officer. On further appeal to the Income-tax Appellate Tribunal (hereinafter referred to as 'the Tribunal') the Tribunal allowed the claim made by the assessee.

The Tribunal has referred the following question for the opinion of the Court which reads as under :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the laboratory and analysis expenses of Rs.39,921/- and Rs.41,160/- were allowable for weighted deduction u/s.35B of the I.T.Act,1961?"

The relevant provision is as under :

"35B.(1)(a) Where an assessee, being a domestic company or a person (other than a company) who is resident in India, has incurred after the 29th day of February,1968 whether directly or in association with any other person, any expenditure (not being in the nature of capital expenditure or personal expenses of the assessee) referred to in clause (b), he shall, subject to the provisions of this section, be allowed a deduction of a sum equal to one and one-third times the amount of such expenditure incurred during the previous year :

[Provided that in respect of the expenditure incurred after the 28th day of February,1973 (but before the 1st day of April,1978), by a domestic company, being a company in which the public are substantially interested, the provisions of this clause shall have effect as if for the words "one and one-third times" the words "one and one-half times" had been substituted.)

(b) The expenditure referred to in clause (a) is that incurred wholly and exclusively on -

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(iii) distribution, supply or provision outside India or such goods, services or facilities, not being expenditure incurred in India in connection therewith or expenditure (wherever incurred) on the carriage of such goods to their destination outside India or on the insurance of such goods while in transit [where such expenditure is incurred before the 1st day of April,1978];

Reading the provision it clearly transpires that the expenditure incurred outside India was required to be taken into consideration while granting the benefit as contemplated under sub-section 1(a) of section 35B. The assessee claimed benefit under section 35B of the Act, on the ground that the amount was spent in India for analysis of the standard of the goods exported. The Assessing Officer was of the view that a sum of Rs.1776/paid to the foreign Bank can be considered. However, a sum of Rs.38,145/- incurred within the country for analysis of goods exported cannot be considered for grant of the benefit under section 35B of the Act for assessment year 1977-78. Similarly Assessing Officer rejected the contention of the assessee that the expenditure incurred in India to the tune of Rs.41,160/towards analysis should be allowed under section 35B of the Act. As stated earlier on appeal the contention was not accepted. However, on further appeal before the Tribunal, in para 8 of the order, the Tribunal considered the submissions made by the assessee that the expenditure incurred in India was for the purpose of analysing product made or processed by the company for export. It was contended that without the certificate of a laboratory certifying the goods were of a standard and quality as required the goods cannot be exported. As certificate was necessary, the Tribunal took the view that the same should have been taken into account for working out relief under section 35B of the Act. The Tribunal expressed an opinion that :

"we are of the opinion that this expenditure was necessary for the purpose of export market".

True that the company was required to supply goods of certain quality and in order to indicate that the material was of specified quality it was required to

get the goods tested. The assessee was required to bear the expenditure incurred for analysis. The question however before the Court is that whether the expenditure incurred in India should be allowed towards weightage deduction as contemplated under section 35B of the Act? If the goods were analysed abroad for which claim was made, situation would stand on a different footing. Sub-clause (iii) of sub-section (b) of section 35(B)(1) refers to distribution, supply or provision outside India and on such goods services or facilities not being expenditure incurred in India in connection therewith. This is a case where the expenditure was incurred within the country. Therefore, under some other provision if the assessee is entitled to claim benefit it can get the benefit but so far as weightage deduction as contemplated u/s.35B is concerned, we are of the view that in view of the language which is explicitely clear the Tribunal has erred in law in granting the benefit.

In view of what we have stated herein above the question has to be answered in negative in favour of the revenue and against the assessee. Rule made absolute with cost.

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m.m.bhatt